

CIB 99-4 Supplement 1 Guidance on Evaluating Contractor Performance and Using Past Performance Information in Source Selection

September 8, 1999

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Rodney W. Johnson, Director

SUBJECT: Guidance on Evaluating Contractor Performance and Using Past Performance Information in Source Selection

CONTRACT INFORMATION BULLETIN 99-4, Supplement 1

The purpose of this CIB supplement is to update the guidance in CIB 99-4 for conducting past performance evaluations and for using past performance information in source selection, using the NIH Contractor Performance System (CPS).

PSC Access to Past Performance Information

My approval of the attached FAR deviation allows NIH to consider USAID Personal Services Contractors (PSC's) Government personnel for purposes of access to contractor past performance information, pursuant to FAR 42.1503(b). This access may be authorized for PSC's who are 1) performing contracting office functions that require utilizing or reporting past performance information, or 2) serving on source evaluation panels. Further, the deviation specifically provides that USAID personal services contracts are not subject to the requirements for preparing contractor performance evaluations.

PSC's employed in Mission contracting offices may be provided CPS user identification and instruction per the procedures covering FSN employees, as set forth in CIB 99-4, dated March 2, 1999. However, NIH is requiring that the PSC's complete and submit the attached Nondisclosure Agreement to it as a condition for access to CPS.

The agreement must be faxed to NIH at (301) 480-0945, Attention: Phyllis Donoghue. The original signed agreement shall be maintained in the PSC contract file.

Mission contracting officers must also notify NIH of any contract term extensions to maintain this access beyond the expiration date listed on the agreement, by E-mailing DONOGHUP@od6100ml.od.nih.gov.

On the other hand, PSC's serving on source evaluation panels may be given access to past performance information on offerors who are contending for an award after the information has been downloaded, but they are not to be given system access to CPS.

Use in Selection of Assistance Recipients

ADS Chapter E303.5.5b provides for applying past performance scrutiny in the selection of assistance recipients, and o. Accordingly, though CPS is intended to support the use of past performance information in selection

procedures for contract awards, you may use the past performance information it has compiled on contractors when these organizations subsequently apply for a grant or a cooperative agreement, to supplement the reference information furnished by the applicant.

However, please note that CPS only records contract performance information, it has no provision for incorporating reports on the performance of these organizations under these assistance instruments.

CPS Training

Instruction for using CPS is being provided two to three days per month, through at least November, 1999 in HR/LS's training facilities in USAID/Washington.

Contracting office personnel are advised that their use of CPS will be significantly enhanced if the CTOs on their contracts receive the portion of this instruction that is applicable to their function of providing the initial rating of the contractors through a limited, on-line connection to CPS.

The training schedule may be found on the USAID Intranet at:

<http://www.usaid.gov/M/HR/lsd/nih.html#aam>

Applicants should E-mail their preferred dates and times for enrolling in one of the training sessions to the USAID Past Performance Coordinator at Past_Performance@OP.SPU@AIDW. Enrollment in a training session will be confirmed by E-mail approximately five days before the session. Mission personnel who are passing thru USAID/Washington, but whose travel plans cannot accommodate one of the sessions in the training schedule, should contact the Past Performance Coordinator to schedule an individual tutorial session.

Interim Measures

Until Mission contracting office personnel compiling past performance reports receive CPS training and access, they shall use the 1/99 edition of Form AID 1420-66 to collect and submit past performance information in the format used by CPS. Until their CTO's have been trained in using CPS, Mission and USAID/Washington contracting office personnel with CPS access may also use this form to collect CTO input on contractor performance and then transcribe the information generated by the CTOs into CPS.

This form may be accessed on the USAID Intranet by selecting Contractor Performance Report at:

<http://tcoweb.usaid.gov/forms/Default.htm#C>

Until the CTO is trained on CPS, the contract office shall assign the report to a CTO by completing the contract demographic data in the beginning of the form if the system does not populate these fields from an NMS database link, and then E-mailing this file to the CTO with instructions to complete the ratings section through the contractor representative phone and E-mail address section of the report and to return it by E-mail. (This 272 KB Word 97 file contains numerous macros and runs significantly faster when downloaded and run on a PC hard drive, as opposed to when it is run on a network server.)

USAID formerly did not require a comment for a rating of "3" or "Good", but CPS requires an entry in all the comment fields for a rating criterion, unless the entry is "N/A". In posting the existing database on CPS, we have put "No comment." in the fields that were rated as "3"s without addressing any comments, but reports entered directly into CPS should include a brief statement that addresses the contractor's performance under the numerically rated criterion.

System Enhancements and Other Developments

Recent enhancements include an increase in the contract number field to include the hyphens, automatic insertion of commas in the contract amount field, an automatic insertion of contract demographic data from an NMS database link that is updated quarterly, and a hyperlink to the GSA List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

Additionally, an updated USAID edition of the CPS User's Guide is available to M/OP on the LAN, in a Word 97 file, at:

p:\oppub\poldocs\pastperf\cpsaidgde.doc

The Guide will be E-mailed to overseas contracting officers separately, upon issuance of this CIB supplement.

In September, NIH will implement a construction contract module. In November, it plans to implement a contractor module, which will generate E-mail to the contractor that provides instructions on accessing the draft report on-line, receive its comments on-line, and incorporate the comments into the report where they may be accessed alongside the assigned performance rating and the rater's comments.

In the next few months, randomly selected CPS users may be contacted concerning two independent reviews of past performance reporting, an IG/A/IT SA audit of USAID compliance with the FAR 42.15 requirements and/or a user survey that is being conducted by an NIH contractor, the Logistics Management Institute. If contacted, please cooperate fully with these inquiries and respond promptly to them.

Liaison with NIH

The above-referenced User's Guide lists NIH contacts for application and technical assistance in the use of its Contractor Performance System. If you have questions or comments on the collection and use of past performance information and requests to initiate or terminate user access to the NIH system please E-mail the Past Performance Coordinator at Past_Performance@OP.SPU@AIDW

Attachments:

1. FAR Deviation
2. Nondisclosure Agreement for USAID Personal Services Contractors

September 2, 1999

ACTION MEMORANDUM FOR THE DIRECTOR, M/OP

TO: M/OP, Rodney W. Johnson

FROM: M/OP/POL, Kathleen J. O'Hara

SUBJECT: Deviation No OP-DEV-99-01c Approval of Class Deviation from FAR 42.1503(b) and 42.1502(b)

Issue: Approval is sought for a USAID-wide class deviation to recognize that USAID personal services contractors (PSC's) are Government personnel with respect to the restriction on the disclosure of contractor performance information in FAR 42.1503(b) when such access is required in the performance of their duties as contracting office personnel and/or in their participation on source evaluation panels.

Collateral deviation from FAR 42.1502(b) is discussed below.

Discussion: As described in CIB 99-4, the USAID Office of Procurement (M/OP) has subscribed to the NIH Contractor Performance System (CPS), an interagency system for preparing and disseminating past performance reports over a secure Internet connection.

Though the provision on the restriction on disclosure of procurement information in FAR 3.104-4 is clearly broad enough to cover USAID PSCs, the FAR 42.1503(b) reference to contractor performance information states that "The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated" Based on its interpretation of the latter provision, the managers of CPS have, to date, declined to authorize USAID PSC's to access its system.

The Economy Act agreement with NIH that authorizes USAID's participation in CPS reserves to NIH the right to make determinations with regard to the security of its system, and it deems a deviation to FAR 42.1503(b) to be necessary to permit it to authorize access by USAID PSCs to CPS or to the information contained in it.

For PSC's whose regular duties include serving in contracting office functions which require reporting past performance information or require utilizing the information in source selection processes, such access necessarily includes appropriate access to the system on which this information is compiled and maintained.

We also seek deviation from FAR 42.1502(b) to specifically include USAID PSC's in the categories of contracts that are exempted from the requirement for preparing contractor performance evaluations. These evaluations were manifestly not intended to cover the performance of individuals who are functioning in employee/employer relationships with USAID, but this point is not specifically addressed by the FAR. So doing will also resolve a potential for conflict of interest if such evaluations were prepared on individuals who could have access

to them and/or the opportunity to alter the information they contain.

In advocating these actions, we note that USAID's PSCs are specifically made subject to the USAID employee standards of conduct by the terms of their contracts, and that the Office of Government Ethics has ruled that PSCs are subject to the post-employment restrictions applicable to U.S. Government employees.

Accordingly, they would also be subject to same restrictions on the use of the system and disclosure of information as other Government personnel with such access and subject to comparable sanctions for their failure to abide by these restrictions.

Without this deviation, USAID will be forced to forego one of the most significant advantages of CPS, the direct accessibility to contracting office personnel of past performance information through an interactive Internet connection.

Presently over 80% of USAID's overseas workforce consists of U.S. and foreign national PSC's, some of them serving in contracting office functions in locations geographically isolated from direct-hire USAID contracting personnel, where this feature constitutes an important rationale for USAID's participation in the NIH system.

Specifically, the Regional Contracting Officer based in Dakar has informed this office that his entire contracting staff consists of foreign national PSC's, some of them in posts in the other countries of his region. If he is personally required to perform all the functions with regard to compiling and using contractor performance information because his PSC staff is denied access, the value of USAID's participation in CPS will be greatly diminished for him and his region.

Additionally, many of the other PSC's are assigned to programmatic offices that may require them to serve on source evaluation panels as a regular part of their functions, and secondary access to past performance information is an integral part of their performance of their evaluation functions on these panels.

Based on USAID's status as an agency-wide reinvention laboratory, the June 24, 1993 memorandum from Richard H. Hopf, GSA Associate Administrator for Acquisition Policy, constitutes evidence of your authority to approve this deviation without the consultation with the CAAC chairperson that is prescribed in FAR 1.404(a)(1).

At the request of NIH, the proposed deviation was submitted to the Office of Federal Procurement Policy for its concurrence, and the nondisclosure agreement, which it recommended has been developed by NIH and incorporated as a condition for authorizing PSC access to CPS.

Recommendation: We recommend that you approve the USAID-wide class deviation from FAR 42.1503(b) and 42.1502(b) as discussed above for a period of two years or until such time as the subject of this deviation is included in a future AIDAR amendment.

Approve:

/S/ R. W. Johnson

Disapprove:

Date:
September 8, 1999

Attachment 2

National Institutes of Health Contractor Performance System

NONDISCLOSURE AGREEMENT

USAID PERSONAL SERVICES CONTRACTORS

Information contained in the National Institutes of Health (NIH) Contractor Performance System (CPS) is highly confidential. Disclosure of this information to unauthorized persons would harm the Federal Government's commercial interest, i.e. the integrity of the competitive acquisition process. Information contained in the CPS falls under the protection of the Privacy Act. Further, information contained in the CPS is protected from disclosure under Exemption 5 of the Freedom of Information Act. Access to information contained in the NIH CPS is restricted to authorized U.S. Government personnel and to personnel performing contract specialist duties under U.S. Agency for International Development (USAID) personal service contracts. Concurrence of the Administrator, Office of Federal Procurement Policy was obtained to permit access to the NIH CPS by USAID personal service contractors performing contract specialist duties.

CERTIFICATION

I require access to the NIH CPS in the performance of my contract specialist duties in an USAID contracting office. As a personal services contractor acting on behalf of USAID, I understand the sensitivity of the information contained in the NIH CPS, and the necessity for security on the entire CPS system. I attest that I will not disclose any information in relation to the NIH CPS (technical or otherwise) to any unauthorized person. I also assert that I have not disclosed, in the past, any information obtained from the NIH CPS to any unauthorized person.

(Signature)

(Signature Date)

(Typed Named)

(Personal Services Contract Number)

(Title)

(Contract Expiration Date)